

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

NANCY KOWALSKI, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

APPLE REIT TEN, INC., APPLE REIT NINE,  
INC., DAVID LERNER ASSOCIATES, INC.,  
DAVID LERNER, GLADE M. KNIGHT,  
BRYAN PEERY, KENT W. COLTON, GLENN  
W. BUNTING, R. GARNETT HALL, JR.,  
RONALD A. ROSENFELD, ANTHONY  
FRANCIS "CHIP" KEATING, III, LISA B.  
KERN, BRUCE H. MATSON, MICHAEL S.  
WATERS, and ROBERT M. WILY,

Defendants.

Case Number: 1:11-cv-02919-KAM-JO

MARVIN LEFF, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

APPLE REIT TEN, INC., APPLE REIT NINE,  
INC., DAVID LERNER ASSOCIATES, INC.,  
DAVID LERNER, GLADE M. KNIGHT,  
BRYAN PEERY, KENT W. COLTON, GLENN  
W. BUNTING, R. GARNETT HALL, JR.,  
RONALD A. ROSENFELD, ANTHONY  
FRANCIS "CHIP" KEATING, III, LISA B.  
KERN, BRUCE H. MATSON, MICHAEL S.  
WATERS, and ROBERT M. WILY,

Defendants.

Case Number: 2:11-cv-03094-KAM-GRB

STANLEY and DEBRA KRONBERG, MARVIN BENDAVID, LAURA BERGER, and WILLIAM MURRAY, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

DAVID LERNER ASSOCIATES, INC., DAVID LERNER, ALAN P. CHODOSH, JOHN GERARD DEMPSEY JR., MARTIN LERNER, STEVEN SORMANI, APPLE REIT EIGHT, INC., APPLE REIT NINE, INC., APPLE REIT TEN, INC., APPLE SUITES REALTY GROUP INC., APPLE EIGHT ADVISORS, INC., APPLE NINE ADVISORS, INC., APPLE TEN ADVISORS, INC., APPLE FUND MANAGEMENT, LLC, GLENN W. BUNTING, KENT W. COLTON, MICHAEL S. WATERS, ROBERT M. WILEY, LISA B. KERN, BRUCE H. MATSON, GARNETT HALL, JR., ANTHONY FRANCIS "CHIP" KEATING, RONALD A. ROSENFELD, DAVID J. ADAMS, and GLADE M. KNIGHT,

Defendants.

Case Number: 1:11-cv-05546-KAM-JO

**STIPULATION AND ORDER REGARDING CONSOLIDATION,  
LEAD PLAINTIFF, LEAD COUNSEL AND SCHEDULING**

**WHEREAS:**

On November 30, 2011, the Court ordered all parties to confer and file a stipulation via ECF regarding consolidation, appointment of lead plaintiff and lead counsel, and a schedule for the filing of an amended consolidated complaint.

***The Kowalski, Leff, and Kronberg Cases***

1. Nancy Kowalski filed *Kowalski v. Apple REIT Ten, Inc.*, Case No. 1:11-cv-02919-KAM-JO, on June 17, 2011, asserting claims for violations of sections 11, 12, and 15 of

the Securities Act of 1933 against Apple REIT Nine, Apple Nine Advisors, Apple REIT Ten, Apple Ten Advisors, several of the REITs' officers and board members, David Lerner Associates (DLA), and David Lerner. (*Kowalski* Dkt. No. 1)

2. Marvin Leff filed *Leff v. Apple REIT Ten, Inc.*, Case No. 2:11-cv-03094-KAM-GRB, on June 28, 2011, asserting claims for violations of sections 11, 12, and 15 of the Securities Act against Apple REIT Nine, Apple REIT Ten, several of the REITs' officers and board members, DLA and David Lerner. (*Leff* Dkt. No. 1)

3. Stanley and Debra Kronberg filed *Kronberg v. David Lerner Associates, Inc.*, Case No. 1:11-cv-05546-KAM-JO, on June 20, 2011 in the District of New Jersey. (*Kronberg* Dkt. No. 1) On October 10, the plaintiffs filed an amended complaint that added William Murray, Marvin Bendavid and Laura Berger as plaintiffs and asserted state law claims against Apple REIT Eight, Apple REIT Nine, Apple REIT Ten, five Apple REIT-related entities, several of the REITs' officers and board members, DLA, David Lerner, and several other DLA officers. (*Kronberg* Dkt. No. 61) On defendants' motion, the District of New Jersey transferred the *Kronberg* case to this Court. (*Kronberg* Dkt. No. 69 & 71)

#### **The Lead Plaintiff Motions**

4. Because they assert Securities Act violations, the *Kowalski* and *Leff* cases are subject to the lead plaintiff provisions of the Private Securities Litigation Reform Act, 15 U.S.C. § 77z-1(a)(3)(B) ("PSLRA"). There were four timely movants for lead plaintiff:

- The DLA Investor Group, composed of Marvin Bendavid, Laura Berger, Barbara Shefsky, and Debra and Stanley Kronberg (*Kowalski* Dkt. No. 31);
- The Apple REIT Investor Group, composed of Thomas F. Rode, Donetta Oppici, Donna Spinelli, Keith Cairo and Betty Ann Leibowitz (*Kowalski* Dkt. No. 34);
- The Leff Group, composed of Marvin Leff, Jeffrey S. Fialkov, and Shirley Baron, individually and on behalf of Shirley Baron/IRA, as trustee of The

Warren Baron Testamentary Trust, and as general partner of S.A. Chase Hill Apartments LP (*Kowalski* Dkt. No. 32); and

- Robert Lubin (*Kowalski* Dkt. No. 27).

5. The DLA Investor Group stated the largest financial interest in Apple REIT Nine and Apple REIT Ten, making the members of the DLA Investor Group the presumptively most adequate plaintiffs under the PSLRA. 15 U.S.C. § 77z-1(a)(3)(B)(iii). The other lead plaintiff movants have either withdrawn their motions or have stated that they do not oppose the DLA Investor Group's appointment as lead plaintiffs. (*Kowalski* Dkt. No. 48, 50, 54, 63 & 64) The defendants have taken no position as to appointment of lead plaintiff and lead counsel. (*Kowalski* Dkt. No. 51 & 53)

#### **Consolidation**

6. The lead plaintiff movants also requested that the Court consolidate the *Kowalski* and *Leff* cases under Federal Rule of Civil Procedure 42(a). (*Kowalski* Dkt. No. 27, 31, 32 & 34) The defendants filed responses supporting consolidation of *Kowalski* and *Leff*. (*Kowalski* Dkt. No. 51 & 53)

7. On November 25, 2011, the DLA Investor Group filed a letter requesting consolidation of the *Kronberg* case with the *Kowalski* and *Leff* cases under Rule 42(a). (*Kowalski* Dkt. No. 60)

8. On November 28, 2011, the defendants filed letters stating that they do not oppose consolidation of *Kowalski*, *Leff* and *Kronberg*. (*Kowalski* Dkt. No. 61 & 62) Lead plaintiff movants the Apple REIT Investor Group and the Leff Group also filed letters stating that they do not oppose consolidation of the cases. (*Kowalski* Dkt. No. 63 & 64)

NOW, THEREFORE, **IT IS STIPULATED AND AGREED**, by and among counsel for the parties named in these actions, as follows:

1. This stipulation is submitted with and expressly conditioned on the understanding that the defendants take no position as to the appointment of lead plaintiff and selection of lead counsel, and the appointment of lead plaintiff and selection of lead counsel are subject to the Court's approval.

2. Under Federal Rule of Civil Procedure 42(a), the *Kowalski*, *Leff*, and *Kronberg* cases shall be consolidated for all purposes into 1:11-cv-02919-KAM-JO, and the caption of that action is amended to be *In re Apple REITs Litigation*.

3. Plaintiffs Marvin Bendavid, Laura Berger, Barbara Shefsky and Debra and Stanley Kronberg, also known as the DLA Investor Group, are appointed lead plaintiffs under the PSLRA, 15 U.S.C. § 77z-1(a)(3)(B). The lead plaintiffs' selected counsel, Girard Gibbs LLP and Zamansky & Associates, LLC, are appointed to serve as lead counsel for the proposed class in the consolidated action.

4. Lead plaintiffs shall file and serve a consolidated complaint by January 18, 2012.

5. Counsel for the lead plaintiffs and the defendants shall appear telephonically before the Court on Tuesday, February 7, 2012, at 4:30 pm for a pre-motion and status conference. Unless the Court at or after the conference orders otherwise, the following shall serve as the schedule for defendants' answers or motions to dismiss.

6. Defendants shall serve on lead plaintiffs' counsel via email their answers or motions to dismiss by March 19, 2012.

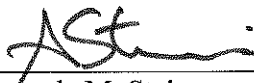
7. If defendants move to dismiss, lead plaintiffs shall serve on all defendants via email an opposition by April 18, 2012.

8. Defendants shall serve on lead plaintiffs' counsel via email reply papers in support of any motions to dismiss by May 18, 2012.

9. Each party shall file its own motion papers via ECF and provide the Court with courtesy copies once the motions to dismiss are fully briefed in accordance with the Court's Individual Practices.

10. Defendants expressly preserve and do not waive any objections any defendant may have to personal jurisdiction or the right to arbitrate any claim governed by an arbitration agreement.

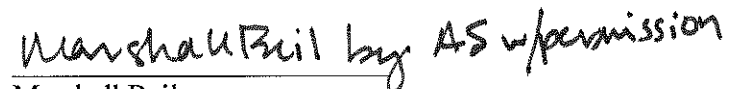
Dated: December 8, 2011

  
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**SO ORDERED:**

Dated: Brooklyn, New York  
December \_\_\_\_, 2011

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Hon. Kiyo A. Matsumoto  
United States District Judge